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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,115	05/30/2001	Yong S. Chen	CLX-701	6532

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EXAMINER

CHORBAJI, MONZER R

ART UNIT PAPER NUMBER

1744

DATE MAILED: 03/31/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,115

Applicant(s)

CHEN, YONG S.

Examiner

MONZER R CHORBAJI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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This non-final office action is in response to the amendment received on 01/06/2003

DETAILED ACTION

Drawings

1. The corrected or substitute drawings were received on 01/06/2003. These drawings are 3-4, 4A, 5A and 5B. The drawings are accepted.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1 and 3-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flashinski et al (U.S.P.N. 6,031,967) in view of Barnhart (U.S.P.N. 6,413,476).

With respect to claims 1 and 10, Flashinski teaches a system (10) and a heat-regulating container (14) for dispensing insecticides (26) into an atmosphere including the following: a heat-regulating container (14) having reservoir with insecticide (22), a lower surface (32) having integral leg support structure (30), a heating device (10) with

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a heating surface (12) at elevated temperature adapted to receive the heat-regulating container (14) and a plurality of integrally formed leg structure extending from the lower surface of the container (30A, 31A and col.4, lines 20-22). Flashinski heating means is through convection heating and fails to disclose that the integral leg support structure is in direct contact with the hot surface in order to regulate the temperature of the volatile material in the container. Barnhart discloses a container (3) whose bottom surface is in direct contact with the hot surface (6) in order to regulate the temperature of the volatile material (102) in the container. It would have been obvious to one having ordinary skill in the art to substitute the known convective heating means of Flashinski with the known conductive heating means of Barnhart since such a substitution makes the heating surface closer to the insecticide material for faster dispensing.

With respect to claims 3-4 and 17, Flashinski teaches the following: reservoir (22) contains a porous solid substrate and the volatile material is impregnated within the substrate (col.1, lines 65-67 and col.2, lines 1-2), volatile material is in a gel form (col.3, line 52) and the container (22) includes a volatile insecticide material (26).

With respect to claims 5-6 and 8-9, Flashinski discloses the following: container is made of metal (20 and col.3, lines 34-36), plurality of integral leg support structures (30A and 31A), plurality of integral leg support structures are provided in a pattern over an entire lower surface of the container (30) and handle means (35).

With respect to claim 7, Flashinski does not teach of a support structure in a zig-zag pattern, however such a construction for supporting the container is a matter of design choice that is well within the scope of the artisan.

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With respect to claims 11-12, Flashinski teaches a container with two integrally formed leg structures such that the height of the legs must intrinsically falls within such a range.

With respect to claims 13-16, Flashinski teaches the following: a closure means for retaining the volatile material in the reservoir (28), the closure means includes an impermeable film (col.3, lines 4-5), the closure means includes a semi permeable membrane (col.2, line 65) and the closure means includes a permeable membrane (col.2, line 65).

5. Claims 1 and 3-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flashinski et al (U.S.P.N. 6,031,967) in view of Encyclopedia Britannica Online.

With respect to claims 1 and 10, Flashinski teaches a system (10) and a heat-regulating container (14) for dispensing insecticides (26) into an atmosphere including the following: a heat-regulating container (14) having reservoir with insecticide (22), a lower surface (32) having integral leg support structure (30), a heating device (10) with a heating surface (12) at elevated temperature adapted to receive the heat-regulating container (14) and a plurality of integrally formed leg structure extending from the lower surface of the container (30A, 31A and col.4, lines 20-22). Flashinski heating means is through convection heating and fails to disclose that the integral leg support structure is in direct contact (conduction heating) with the hot surface in order to regulate the temperature of the volatile material in the container. The Encyclopedia Britannica discloses three known means of heating an object. It would have been obvious to one having ordinary skill in the art to substitute the known convective heating means of

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Flashinski with the known conductive heating means of Encyclopedia Britannica since such a substitution result in moving the heat from one object directly to another object (Encyclopedia Britannica Online, line 13).

With respect to claims 3-4 and 17, Flashinski teaches the following: reservoir (22) contains a porous solid substrate and the volatile material is impregnated within the substrate (col.1, lines 65-67 and col.2, lines 1-2), volatile material is in a gel form (col.3, line 52) and the container (22) includes a volatile insecticide material (26).

With respect to claims 5-6 and 8-9, Flashinski discloses the following: container is made of metal (20 and col.3, lines 34-36), plurality of integral leg support structures (30A and 31A), plurality of integral leg support structures are provided in a pattern over an entire lower surface of the container (30) and handle means (35).

With respect to claim 7, Flashinski does not teach of a support structure in a zig-zag pattern, however such a construction for supporting the container is a matter of design choice that is well within the scope of the artisan.

With respect to claims 11-12, Flashinski teaches a container with two integrally formed leg structures such that the height of the legs must intrinsically falls within such a range.

With respect to claims 13-16, Flashinski teaches the following: a closure means for retaining the volatile material in the reservoir (28), the closure means includes an impermeable film (col.3, lines 4-5), the closure means includes a semi permeable membrane (col.2, line 65) and the closure means includes a permeable membrane (col.2, line 65).

Response to Arguments

6. Applicant's arguments with respect to claims 1 and 3-17 have been considered but are moot in view of the new ground(s) of rejection.

The Flashinski reference uses convective heating means to dispense insecticide.

The Barnhart reference is used to show that conductive heating means is known in the art of dispensing.

The Encyclopedia Britannica Online reference is used to show that the three methods of heating (conduction, convection, and radiation) are known means to generate volatile materials.

Thus, two methods in heating volatile materials is known such that substituting one method for the other along with inherent structural changes is a matter of choice of the artisan.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (703) 305-3605. The examiner can normally be reached on M-F 8:30-5:00.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Monzer R. Chorbaji *MRC*
Patent Examiner
AU 1744
March 21, 2003

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